

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

BRYSON ANDREW,

Plaintiff,

v.

**Civil Action No. 5:10cv108
(Judge Stamp)**

**MICHAEL WATERS AND
LEWIS BRESKOACH,**

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

On this day, the above-styled matter came before the Court for consideration of the plaintiff, Bryson Andrew's, motion to voluntarily dismiss his complaint. In the motion, the plaintiff asserts that because summonses have not issued, the opposing party has not yet been served a copy of the complaint and no answer has been filed, he is permitted to voluntarily dismiss his complaint without prejudice under Rule 41(a) of the Federal Rules of Civil Procedure.

Pursuant to Rule 41(a), before the opposing party serves an answer or motion for summary judgment, a plaintiff may dismiss his case for any reason. Here, the defendants have not yet been served a copy of the complaint and no answer or other response has been filed. Accordingly, the plaintiff's motion to voluntarily dismiss his complaint (Dckt. No. 8) is GRANTED and the plaintiff's complaint is DISMISSED WITHOUT PREJUDICE from the active docket of this Court. Should the petitioner choose to appeal the judgment of this Court to the United States Court of Appeals for the Fourth Circuit, he is ADVISED that he must file a notice of appeal with the Clerk

of this Court within 30 days after the date of the entry of the judgment order.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the petitioner and counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: November 5, 2010.

/s/ Frederick P. Stamp, Jr.

FREDERICK P. STAMP, JR.

UNITED STATES DISTRICT JUDGE